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April 17, 2023

**VIA E-FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, Second Floor  
Harrisburg, PA 17120

**RE: Yelena Gerasimenko v. PECO Energy Company**  
**Docket No. C-2023-3039248**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are the **REFILED Preliminary Objections of Respondent, PECO Energy Company**. The previous version contained an error in the docket number.

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Khadijah Scott".

Khadijah Scott, Esquire  
Assistant General Counsel, PECO Energy Company

Encl.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>YELENA GERASIMENKO</b>	:	
<b>Complainant</b>	:	
	:	
<b>v.</b>	:	<b>DOCKET NO. C-2023-3039248</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

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**NOTICE TO PLEAD**

Pursuant to 52 Pa. Code §§ 5.101 and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Preliminary Objection within 10 days from service of this notice, a ruling may be entered against you. Your response must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Khadijah Scott, and where applicable, the Administrative Law Judge presiding over the issue.

File with:  
Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, Second Floor  
Harrisburg, PA 17120

With a copy to:  
Khadijah Scott  
PECO Energy Company  
2301 Market Street, S-23  
Philadelphia, PA 19103

Dated: April 17, 2023



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Khadijah Scott  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
(26) 841-5331-1830  
Fax: 215.568.3389  
Khadijah.Scott@exeloncorp.com

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>YELENA GERASIMENKO</b>	:	
<b>Complainant</b>	:	
	:	
<b>v.</b>	:	<b>DOCKET NO. C-2023-3039248</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

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**PRELIMINARY OBJECTION OF RESPONDENT,  
PECO ENERGY COMPANY**

Respondent, PECO Energy Company (“PECO”), pursuant to 52 Pa. Code § 5.101(a)(4) respectfully petitions this Honorable Commission to dismiss the instant Complaint as legally insufficient.

1. On March 27, 2023, PECO Energy was served with a formal complaint filed by Yelena Garasimenko (hereafter “Complainant”).
2. In her formal complaint, Complainant alleges that she experienced two (2) power outages which caused \$1075.00 in damages, for which she seeks reimbursement. See Formal Complaint.
3. PECO Energy simultaneously filed an Answer and the instant Preliminary Objection.
4. Pursuant to 52 Pa. Code § 5.101, preliminary objections may be filed against a complaint and dismissed for legal insufficiency. 52 Pa. Code § 5.101(a)(4).
5. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure. Equitable Small Transportation

Intervenors. v. Equitable Gas Co., 1994 Pa.PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

6. In deciding preliminary objections, the Public Utility Commission must determine, based on the factual pleadings of the petitioner, if relief or recovery is possible. Roc v. Flaherty, 527 A.2d 211 (Pa. Cmwlth 1985).

7. A complaint must be able to recover under the law to survive a preliminary objection. Milliner v. Enck, 709 A.2d 417, 418 (Pa. Super. Ct. 1998) (“preliminary objection should be sustained only where it appears with certainty that, upon the facts averred, the law will not allow the plaintiff to recover”).

8. All of the non-moving party’s averments must be taken as true for the sake of deciding the preliminary objection. County of Allegheny v. Commw. of Pa., 490 A.2d 402 (Pa. 1985).

9. The court does not, however, need to accept, “unwarranted inferences from facts, argumentative allegations, or expressions of opinions.” Feingold v. McNulty, 2009 Phila. Ct. Com. Pl LEXIS 167, \*3.

10. Section 703 of the Public Utility Code, 66 Pa. C.S.A. § 703(b) provides that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary to the public interest.

11. A hearing is required only when there is a disputed question of fact, and is not required to resolve questions of law. Dee-Dee Cab, Inc. v. Pa.Pub. Util. Comm’n, 817 A.2<sup>nd</sup> 593 (Pa.Commw. Ct. 2003), petition for allowance of appeal denied, 836 A.2d 123 (Pa. 2003).

12. Here, the facts in this matter include the following:

- a. The Complainant alleges that she incurred damages to her personal property as a result of two (2) power outages that occurred at her home.
  - b. The Complainant requests that the PUC order PECO Energy to compensate her to cover the cost of repair and replacement.
13. The Complainant is requesting that the Commission award her damages for her costs.
14. To the extent the Complainant is requesting a monetary award for costs, the Complainant is not entitled to relief under the law.
15. The Commission lacks jurisdiction to award damages pursuant to 52 Pa. Code § 5.101(a)(1).
16. Accordingly, the Complainant's formal complaint which seeks monetary reimbursement from PECO should be denied pursuant to 52 Pa. Code § 5.101(a)(1).

### **REQUEST FOR RELIEF**

WHEREFORE, for all of the reasons stated herein, PECO respectfully requests that your Honorable Commission dismiss the instant complaint with prejudice.

Respectfully submitted,



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Khadijah Scott  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
(215) 841-6841  
Fax: 215.568.3389  
Khadijah.Scott@exeloncorp.com

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>YELENA GERASIMENKO</b>	:	
<b>Complainant</b>	:	
	:	
v.	:	<b>DOCKET NO. C-2023-3039248</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

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**VERIFICATION**

I, Khadijah Scott, hereby declare that I am counsel for PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. §4904 pertaining to false statements to authorities.



Date: April 17, 2023

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Khadijah Scott

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>YELENA GERASIMENKO</b>	:	
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	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

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**CERTIFICATE OF SERVICE**

I, KHADIJAH SCOTT, hereby certify that I have this day served a copy of PECO Energy Company's Preliminary Objections in the above matter upon all interested parties by E-mailing a copy to:

YELENA GERASIMENKO  
11622 GIFFORD ST,  
RS-1 IN/OUT  
PHILADELPHIA PA 19116  
*Via email: gerasimenko@live.com*

Dated: April 17, 2023



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Khadijah Scott  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
(267) 841-533-1830  
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